

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Promote Policy and
Program Coordination and Integration in Electric Utility
Resource Planning.

Rulemaking 04-04-003
(Filed April 1, 2004)

**REQUEST FOR AN AWARD OF COMPENSATION TO
THE UNION OF CONCERNED SCIENTISTS
FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 06-02-032**

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I. INTRODUCTION

Pursuant to California Public Utilities Code §1801 and Rule 76.71 *et. seq.* of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Union of Concerned Scientists ("UCS") respectfully submits this request ("Request") for an award of intervenor compensation for its substantial contributions to Decision 06-02-032 ("Decision"). UCS requests that the Commission award UCS compensation for its staff and consultant time in the amount of \$19,823.85 for its work in 2005 and 2006 pursuant to this decision, as well as the time spent in 2007 preparing this Request.

UCS timely filed a Notice of Intent to Claim Intervenor Compensation ("NOI") in this proceeding on June 1, 2004. In a ruling dated July 27, 2004 Administrative Law Judge Wetzell found UCS eligible to receive intervenor compensation, and also found UCS to be a "Category 3" customer meeting the standard of significant financial hardship within the meaning and definition of Public Utilities ("P.U.") Code Section 1802(b)(1)(C). UCS's circumstances with respect to such eligibility have not changed.

In accordance with P.U. Code §1804(c), this Request is being filed within 60 days of the September 25, 2007 mailing date of D.07-09-040 in this proceeding, which states that R.04-04-003 is to be closed. Rule 17.3 of the Commission's Rules of Practice and Procedure states that requests for an award of compensation shall be filed within 60 days of the issuance of the decision that resolves an issue on which the intervenor believes it made a substantial contribution or the decision closing the proceeding. This Request is being filed pursuant to the latter circumstance. It includes a description of UCS's substantial contributions to the Decision as well as a detailed description of time spent and expenditures. As requested by the Commission in D.04-03-033, UCS attests that no grant monies from any source were used to fund work for which UCS is requesting intervenor compensation.

II. UCS MADE SUBSTANTIAL CONTRIBUTIONS TO DECISION 06-02-032 IN THIS PROCEEDING

A. Standards for Finding of Substantial Contribution

UCS's participation in this phase of R.04-04-003 has clearly met the requirements for establishing a substantial contribution, as defined in Sections 1802(i) and 1803 of the Public Utilities Code. Section 1802(i) states:

'Substantial contribution' means that, in the judgment of the commission, the customer's presentation has substantially assisted the commission in the making of its order or decision because the order or decision has adopted in whole or in part one or more factual contentions, legal contentions, or specific policy or procedural recommendations presented by the customer. Where the customer's participation has resulted in a substantial contribution, even if the decision adopts that customer's contention or recommendations only in part, the commission may award the customer compensation for all reasonable advocate's fees, reasonable expert fees and other reasonable costs incurred by the customer in preparing or presenting that contention or recommendation.

Section 1803 states in part:

The commission shall award reasonable advocate's fees, reasonable expert witness fees, and other reasonable costs of preparation for and participation in a hearing or proceeding to any customer who...satisfies...the following requirements:

(a) The customer's presentation makes a substantial contribution to the adoption, in whole or in part, of the commission's order or decision.

The Commission has elaborated on this statutory standard as follows:

A party may make a substantial contribution to a decision in various ways. It may offer a factual or legal contention upon which the Commission relied in making a decision. Or it may advance a specific policy or procedural recommendation that the ALJ or Commission adopted. A substantial contribution includes evidence or argument that supports part of the decision, even if the Commission does not adopt a party's position in total. The Commission has provided compensation even when the position advanced by the intervenor is rejected. (D.99-08-006, 1999 Cal. PUC LEXIS 497, *3-4).

With respect to the last sentence in the quoted section immediately above, the Commission has made clear that a substantial contribution may consist of "...provid[ing] a unique perspective

that enriched the Commission’s deliberations and the record...”¹ even if the position advanced is not adopted.

B. UCS’s Substantial Contributions in D.06-02-032

In this Decision, the Commission expressed its intent to develop a load-based cap on greenhouse gas (“GHG”) emissions for the investor-owned utilities (“IOUs”) and non-utility load serving entities (“LSEs”). This Decision also addressed a variety of design and implementation issues related to this intent, including setting a baseline year and baseline GHG levels, rates of emission reductions over time, agency and policy coordination, principles regarding both GHG cap and resource-specific performance incentives and penalties, and allocation of GHG emissions allowances, among others. The record for D.06-02-032 was developed largely through Commission workshops and parties’ pre- and post-workshop comments. In contributing to this Decision, UCS provided pre-workshop opening comments;² actively participated in the three days of workshops held March 7 – 9, 2005; provided post-workshop opening comments³ and post-workshop reply comments;⁴ and provided joint opening and reply comments on the Commission’s proposed decision.⁵

UCS assisted the Commission in developing a record for and otherwise informing D.06-02-032 in among the following ways:

- 1) GHG Cap. In its pre- and post-workshop comments and during workshops, UCS explained the importance of establishing a GHG cap and having such a cap be load-

¹ D. 07-06-032 at 4.

² Pre-Workshop Opening Comments of the Union of Concerned Scientists on Proposed Procurement Incentive Framework, February 11, 2005 (“UCS Pre-Workshop Opening Comments”).

³ Post-Workshop Opening Comments of the Union of Concerned Scientists on Proposed Procurement Incentive Framework, May 2, 2005 (“UCS Post-Workshop Opening Comments”).

⁴ Post-Workshop Reply Comments of the Union of Concerned Scientists on Proposed Procurement Incentive Framework, May 23, 2005 (“UCS Post-Workshop Reply Comments”).

⁵ Comments of the NRDC and UCS on the Draft “Opinion on Procurement Incentives Framework,” February 2, 2006; and Reply Comments of the NRDC and UCS on the Draft “Opinion on Procurement Incentives Framework,” February 7, 2006.

based in the Commission's overall procurement incentive framework.⁶ Characterizing this issue as the "threshold 'fork in the road' policy issue in this phase of the proceeding," the Decision adopted both of these recommendations, and cited UCS's supporting rationales in considerable detail.⁷

- 2) GHG Emissions Baselines. In its post-workshop comments, UCS took issue with the Commission Staff proposal to base allowable GHG emissions on each IOU's current resource plan, arguing that the GHG cap should be set significantly lower than current levels and that a past year should be used for baseline purposes to avoid distorting the IOU's incentives to reduce GHG emissions.⁸ The Decision adopted both of these recommendations and made extensive reference to UCS's positions and recommendations in describing the Commission's ultimate positions on this issue.⁹
- 3) Adjustments to GHG Reduction Requirements Over Time. The Decision pays considerable attention to an issue that UCS raised in its written comments and during the workshops; namely, the importance of reducing the GHG cap over time and at a suitably aggressive rate.¹⁰ The Decision favorably references UCS's idea to develop a supply curve of GHG reduction measures as a means of determining the future GHG cap trajectory and otherwise invokes UCS's analysis and recommendations in addressing this issue.¹¹
- 4) Coordination with Parties and Policies in Instituting GHG Cap. In its pre- and post-workshop comments and during workshops, UCS argued that the Commission's implementation of a GHG cap should be done in coordination with other agencies and policies and that by doing so the Commission could and should take a lead role in effecting GHG emissions reductions.¹² The Decision agreed with UCS on these points.¹³

⁶ See, e.g., UCS Pre-Workshop Opening Comments, pp. 2-4; UCS Post-Workshop Opening Comments, pp. 1-4.

⁷ Decision at 10.

⁸ UCS Post-Workshop Opening Comments, p.3.

⁹ Decision at 32 and 33-34.

¹⁰ UCS Post-Workshop opening Comments, pp. 8-9 and Decision at 35.

¹¹ *Id.*

¹² See, e.g.: "An electric and gas sector carbon cap should ultimately apply statewide, be developed in collaboration with other State agencies, and complement future climate policy developments." UCS Pre-Workshop Comments, p.6.

¹³ Decision at 14.

- 5) *Role of Financial Incentives and Penalties.* In its written and oral comments, UCS recommended that the Commission establish category-specific incentives and penalties rather than a single incentive metric for all resource categories.¹⁴ The Decision adopted this recommendation and referenced UCS's recommendations and rationales at considerable length,¹⁵ concluding: "With this guidance in mind, we will proceed to evaluate shareholder risk/reward incentive mechanisms in resource-specific proceedings."¹⁶ In its written and oral comments, UCS also argued that penalties with respect to the GHG cap are essential to the success of the Commission's GHG reduction program.¹⁷ UCS further recommended that penalties be structured as alternate compliance payments ("ACP"). The Decision acknowledged that UCS was the main party arguing for GHG performance penalties and adopted UCS's positions on the need for penalties and the preferable penalty structure: "We agree with UCS that some form of penalty structure is necessary...[A]t this juncture, based on the discussion of this issue in the workshop report and in UCS's comments, we prefer structuring penalties as ACPs."¹⁸
- 6) *Interaction of GHG Cap and Financial Incentives.* In its written and oral comments, UCS provided analysis and recommendations addressing certain risks of performance double-counting in the context of incentives and the possible sale of GHG allowances, and identified pitfalls to be avoided and suggestions for properly integrating resource-specific incentives with GHG cap incentives.¹⁹ In addressing these issues the Decision incorporated a number of UCS's observations, concerns, and suggestions.²⁰
- 7) *Allocation of GHG Allowances.* On this issue, UCS recommended that GHG allowances be allocated administratively rather than by auction.²¹ The Decision adopts this position.²²

¹⁴ See, e.g., UCS Post-Workshop Opening Comments, pp. 4-5.

¹⁵ Decision at 24 and 27-28.

¹⁶ *Id.* at 28.

¹⁷ UCS Post-Workshop Opening Comments, p. 14.

¹⁸ Decision at 41.

¹⁹ UCS Post-Workshop Opening Comments, pp. 17-18.

²⁰ Decision at 30-31.

²¹ UCS Post-Workshop Opening Comments, p. 10.

²² Decision at 37-38.

In addition to these discrete, explicit contributions, the Commission sought input from parties – and UCS provided such input – on a wide range of issues relating to the establishment of a GHG reduction program, not all of which the Commission chose to act definitively on in the Decision (*e.g.*, while the Commission solicited and UCS provided input on a variety of issues related to flexible compliance, it decided to address these issues in a subsequent phase or proceeding²³). In other instances, the Commission sought input on possible regulatory schemes (*e.g.*, specifics of allowance auctioning) that it ultimately decided against. A substantial amount of UCS’s input was devoted to responding to the Commission’s questions on such issues. UCS contends that its analyses and recommendations on this broader range of issues also made significant contributions to the Commission’s deliberations in the fashioning of its Decision.

III. UCS’S PARTICIPATION HAS BEEN EFFICIENT AND PRODUCTIVE

In conducting its work, UCS consistently coordinated its efforts in this proceeding with other parties to avoid duplication of effort and to ensure efficiency. The intervenor compensation statutes (§1802.5) allow the Commission to award full compensation even where a party’s participation has overlapped in part with showings made by other parties. Any duplication that occurred in this proceeding was unavoidable due to parties’ sometimes similar interests, but UCS avoided duplication to the extent possible and tried to minimize it where it was unavoidable. In particular, UCS coordinated its efforts closely with the Natural Resources Defense Council (“NRDC”), including jointly filing opening and reply comments on the proposed decision.

²³ Decision at 3.

In D.98-04-059, the Commission adopted a requirement that a customer must demonstrate that its participation was “productive,” as that term is used in §1801.3. The Commission directed customers to demonstrate productivity by attempting to assign a reasonable dollar value to the benefits of their participation to ratepayers. The Commission should treat this compensation request as it has treated similar past requests with regard to the difficulty of establishing specific monetary benefits associated with the participation of consumer and environmental intervenors.

In a policy proceeding such as this one, particularly one concerned as much with environmental benefits as economic benefits, it is extremely difficult to estimate the monetary benefits of UCS’s participation. However, UCS submits that its contributions to the Commission’s GHG reduction policy framework will help protect customers from financial risks associated with likely federal regulation of greenhouse gases. The magnitude of such risks could easily be on the order of billions of dollars. Moreover, the Commission’s adoption of certain of UCS’s positions and recommendations regarding performance incentives and penalties will help ensure that the net societal benefits associated with this Decision and related successor decisions will be enhanced. Given the scale of IOU investments and customer costs that are likely to be influenced by the Decision, UCS submits that its work in this phase of R.04-04-003 can be expected to save ratepayers many times the cost of our participation in this phase of the proceeding. As such, the Commission should find that the costs of UCS’s participation bear a reasonable relationship to the magnitude of UCS’s contributions, and that UCS’s overall participation was productive.

IV. UCS'S CLAIM IS REASONABLE

The hours and expenses claimed by UCS are reasonable and properly detailed, and the hourly rates requested are reasonable and consistent with rates requested by other intervenors for staff of similar experience and expertise, as well as with rates paid by IOUs to their staff and to outside consultants with similar experience and expertise.

A. The Hours Claimed Are Reasonable and Properly Detailed

UCS has maintained detailed records of time spent on this proceeding, and has segregated hours by time spent by staff and consultants, as set forth in Attachment A to this Request. UCS is seeking compensation for time spent for staff and outside consultant time, and reasonable costs. The hours claimed are reasonable given the scope of this proceeding and the complexity of the issues presented. The costs covered by this request do not duplicate costs included in any prior UCS compensation requests in R.04-04-003. No compensation for administrative or travel time is requested, in accordance with Commission practice.

The individuals who worked on this phase of the proceeding and for whom UCS is requesting compensation are John Galloway, a former UCS staff member, and Clyde Murley, an outside consultant who provided technical and policy consulting and regulatory representation in 2005 and 2006 and who worked on this Request.

A summary of the hours, requested rates, and amount of request by individual is provided below:

Professional Participation							
Name	Type	Organization/ Firm	2005 Hours	2005 Hourly Rate	2006 Hours	2006 Hourly Rate	Total Request
John Galloway	Senior Energy Analyst	Union of Concerned Scientists	0	N/A	12.75	\$125	\$1,593.75
Clyde Murley	Consultant	Independent Consultant	81.75	\$173	13.20	\$180	\$16,518.75

Professional Participation Total: \$18,112.50

Intervenor Claim Preparation						
First Name	Last Name	Type	Organization/ Firm	2007 Hours	2006 Hourly Rate	Total
Clyde	Murley	Consultant	Independent Consultant	16.7	\$90.00	\$1,503.00

Expenses	\$208.35
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Grand Total			\$ 19,823.85
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B. The Hourly Rates Claimed Are Reasonable

This section provides justification for the hourly rates requested for UCS staff and its consultant. The rates requested are consistent with rates awarded to other intervenors with commensurate experience and expertise performing similar tasks and are consistent with prior Commission decisions addressing the setting of intervenor rates. With the exception of the requested 2006 cost-of-living adjustment (“COLA”) for Mr. Murley, they are also rates that the Commission has previously approved.

UCS Staff

John Galloway. In D.06-04-022 the Commission authorized a 2005 rate for Mr. Galloway of \$120. In D.07-01-009 the Commission found that an increase of 3% for 2006

intervenor work was reasonable, above rates previously adopted for 2005. Consequently, in D. 07-06-032 the Commission approved a 2006 rate for Mr. Galloway of \$125. UCS therefore requests a rate of \$125 for Mr. Galloway for 2006.

During his participation in this proceeding, Mr. Galloway was a Senior Energy Analyst for the Union of Concerned Scientists' (UCS) Clean Energy Program, a position he assumed in 2004. Mr. Galloway led UCS's participation in California regulatory proceedings in cases relating to renewable energy and global climate change, and coordinated UCS's legislative advocacy work on clean energy. Prior to coming to UCS, Mr. Galloway worked for the Commission for five years as an energy analyst on renewable energy and distributed generation policy and was the Energy Division's lead on implementing the California renewable portfolio standard. Mr. Galloway has a Masters Degree from the University of California at Berkeley in Energy and Resources, and a Bachelors Degree from the Georgia Institute of Technology in Electrical Engineering with a specialization in Power Systems Engineering.

Clyde Murley – Outside Consultant

Clyde Murley. In Decision 06-06-056 the Commission authorized a 2005 intervenor compensation rate of \$173 for Mr. Murley. UCS requests the same rate here for Mr. Murley's 2005 work. In D.07-06-032 the Commission awarded a 2006 rate of \$173 as well for Mr. Murley. Contrary to the setting of Mr. Galloway's rate as noted above, Mr. Murley's awarded rate in D. 07-06-032 did not include the 3% COLA specified by D.07-01-009. D.07-06-032 based the \$173 rate on the fact that Mr. Murley was awarded this same rate in two prior 2006 Commission decisions. However, both of those decisions preceded the issuance of D.07-01-009, which specified the 2006 3% COLA. UCS respectfully requests that for the purpose of the present request Mr. Murley's 2006 rate be adjusted to reflect the 2006 COLA. Doing so,

together with the Commission's rounding convention, yields a 2006 rate of \$180 for Mr. Murley. UCS therefore requests a rate of \$180 for Mr. Murley for his work in 2006.

Despite the fact that Mr. Murley's time spent working on this Request was in 2007, UCS requests that this time only be compensated at the requested 2006 rate, while reserving the right to request a different 2007 rate for Mr. Murley in future requests.

Mr. Murley is an independent consultant with 20 years of professional experience in energy and environmental issues, including policy and technical experience and expertise in the areas of energy efficiency, renewable energy, demand response, integrated resource planning, energy economics, energy procurement, and environmental protection, and he has served as an expert witness in several of these areas. Mr. Murley represents clients both as a subject-matter expert and as an advocate in evidentiary and settlement proceedings. Mr. Murley's experience includes four-plus years with Grueneich Resource Advocates, where he represented clients before this Commission and the California Energy Commission; three-plus years on the staff of the Commission, where he managed environmental studies and advised the Commission on integrated resource planning and energy efficiency matters; three-plus years with the Natural Resources Defense Council, where he led a variety of energy efficiency and environmental initiatives in Hawaii; and four years during which he founded, directed, and taught in a graduate environmental studies program at Antioch University. Mr. Murley has also worked for PG&E as a research manager and has held various energy and environmental consulting positions. Mr. Murley has been an independent consultant since the beginning of 2005, representing a variety of public interest and public sector organizations on energy and environmental matters. Mr. Murley holds two degrees from the University of California, Berkeley, a B.A. in Environmental Sciences, and a M.A. in Energy and Resources.

V. CONCLUSION

UCS made a significant contribution to Decision 06-02-032 in the ways described above. The hourly rates and costs claimed are reasonable and consistent with awards to other intervenors and utility experts and advocates with comparable experience and expertise, and consistent with the Commission's decisions regarding hourly rates. UCS has met the procedural requirements for intervenor compensation set forth in §1801 *et seq* of the Public Utilities Code. UCS respectfully requests that its request be granted in full.

Respectfully submitted,

By _____/s/_____
Cliff Chen

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Dated: November 21, 2007

VERIFICATION

I, Cliff Chen, am a representative of the Union of Concerned Scientists and am authorized to make this verification on the organization's behalf. The statements in the foregoing document are true to the best of my knowledge, except for those matters that are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 21, 2007, at Berkeley, California.

_____/s/_____
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CERTIFICATE OF SERVICE

I, Jennifer Boynton, certify that I have, on this date, caused the foregoing REQUEST FOR AN AWARD OF COMPENSATION TO THE UNION OF CONCERNED SCIENTISTS FOR SUBSTANTIAL CONTRIBUTIONS TO DECISION 06-02-032 to be served by electronic mail, or for any party for which an electronic mail address has not been provided, by U.S. Mail on the parties listed on the Service List for the proceeding in California Public Utilities Commission Docket No. R.04-04-003.

I declare under penalty of perjury, pursuant to the laws of the State of California, that the foregoing is true and correct.

Executed on November 21, 2007 at Berkeley, California.

_____/s/_____
Jennifer Boynton

Attachment A

Union of Concerned Scientists

Time and Expense Records

for

D.06-02-032

in

R.04-04-003

[SEE ATTACHED SPREADSHEET]